

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

RHT, INC., an Illinois Corporation,  
d/b/a LINERS DIRECT

Plaintiff,

v.

RE-BATH LLC, an Arizona Limited Liability  
Corporation,

Defendant.

**CASE NO. 08 C 1003**

Judge Leinenweber

Magistrate Judge Brown

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR  
IMPROPER VENUE OR IN THE ALTERNATIVE TRANSFER VENUE**

Defendant Re-Bath, L.L.C. ("Re-Bath"), by and through undersigned counsel, moves this Court to dismiss this action for improper venue under Fed.R.Civ.P. 12(b)(3), or in the alternative, to transfer this case to the District Of Arizona.

In support hereof, Defendant relies upon all matters of record to date and further state:

1. This case originally relates to a patent infringement claim between the parties, although the patent-in-suit has been disclaimed and relinquished by Defendant, making the instant case moot.

2. Nevertheless, an examination of the allegations contained in the Complaint, as well as the events that have transpired in recent weeks regarding the status of the patent-in-suit, support the conclusion that venue is not proper in the Northern District of Illinois.

3. As described in the attached Memorandum, Plaintiff provides no basis for the exercise of personal jurisdiction over the Defendants or that venue is proper in Illinois. Plaintiff's choice of forum is nothing more than a transparent effort to burden Defendants with the costs and inconvenience of litigating in another forum, particularly where the Illinois Plaintiff

has no infringement exposure and this litigation will only involve conduct between Arizona Defendants and the USPTO in Washington, D.C.

4. Plaintiff's action should be dismissed because the venue is improper.
5. In the alternative, this Court should transfer this action to the District of Arizona.

### **CONCLUSION**

WHEREFORE, Defendants respectfully request that this Court dismiss with prejudice Plaintiff's Complaint for improper venue under Fed.R.Civ.P. 12(b)(3), or in the alternative, transfer this action to the District of Arizona under 28 U.S.C. § 1404(a), and award such other relief the Court deems just.

Respectfully submitted this 15<sup>th</sup> day of May, 2008.

**GALLAGHER & KENNEDY, P.A.**

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Attorneys for Defendant Re-Bath, L.L.C.

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of May, 2008, I electronically transmitted a PDF version of this document to the Clerk of the Court, using the CM/ECF System for filing and for transmittal of a Notice of Electronic Filing to all CM/ECF registrants and non-registered parties.

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